

Message Text

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PAGE 01 MONTEV 04396 131915Z

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TAGS: PINS, SHUM, PGOV, UY

SUBJ: HUMAN RIGHTS: THE LEGAL DEFENSE OF ALLEGED

SUBVERSIVES UNDER URUGUAY'S MILITARY COURT SYSTEM

REF: A. MONTEVIDEO A-76; B. MONTEVIDEO A-77

1. EMBASSY WISHES TO CALL ATTENTION OF ALL OFFICES AND INDIVIDUALS CONCERNED WITH HUMAN RIGHTS TO ITS A-76, "THE LEGAL DEFENSE OF ALLEGED SUBVERSIVES UNDER URUGUAY'S MILITARY COURT SYSTEM".

2. SUMMARY OF AIRGRAM FOLLOWS:

"URUGUAY, A CIVIL LAW COUNTRY, HAS A SUBSTANTIALLY DIFFERENT CRIMINAL PROCEDURE THAN DOES THE UNITED STATES, WITH ITS ADVERSARY SYSTEM OF JUSTICE BASED ON ANGLO-SAXON COMMON LAW. THIS IS TRUE WITH RESPECT TO BOTH THE CIVILIAN AND MILITARY COURT SYSTEMS, BASED RESPECTIVELY ON THE ORDINARY PENAL CODE (OPC) AND THE MILITARY PENAL CODE (MPC).

"UNDER THE NATIONAL SECURITY LAW OF 1972 AND OTHER LAWS, TERRORISM, SUBVERSION AND OTHER "CRIMES AGAINST THE NATION" ARE SUBJECT TO THE MILITARY COURT SYSTEM FOR PRE-TRIAL INVESTIGATION, ARRAIGNMENT, TRIAL, SENTENCING, AND APPEALS.

THE MILITARY JUDGES WHO PRESIDE AT THESE STAGES ARE NOT LIMITED OFFICIAL USE

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PAGE 02 MONTEV 04396 131915Z

TRAINED LAWYERS (WITH THE EXCEPTION OF THE HEAD OF THE MILITARY APPEALS COURT), BUT ACT WITH THE ASSISTANCE OF TRAINED CIVILIAN LAWYERS.

"ACCORDING TO THE EMERGENCY SECURITY MEASURES, A PERSON ACCUSED OF SUBVERSIVE ACTIVITIES IS SUPPOSED TO BE BROUGHT BEFORE A MILITARY JUDGE WITHIN TEN DAYS (AS OPPOSED TO 24 HOURS FOR A PERSON UNDER THE OPC). THIS IS FREQUENTLY NOT

OBSERVED IN PRACTICE SO THAT SUCH A PERSON IS OFTEN NOT INFORMED WITHIN A REASONABLE TIME OF THE FORMAL CHARGES AGAINST HIM. IN ADDITION, THERE ARE LENGTHY DELAYS BEFORE JUDICIAL PROCEEDINGS ARE STARTED AGAINST AN ACCUSED (AS OPPOSED TO THE 48 HOUR LIMIT UNDER OPC). UNDER THE MPC A JUDGE DOES NOT PARTICIPATE WITH THE AUTHORITIES IN THE PRE-TRIAL INVESTIGATION OF AN ACCUSED NOR ARE ATTORNEYS PERMITTED ACCESS TO THEIR CLIENTS DURING THIS STAGE. ONCE THE ACCUSED IS TURNED OVER TO A MILITARY JUDGE FOR POSSIBLE ARRAIGNMENT, LAWYERS ARE PERMITTED ACCESS TO THEIR CLIENTS BUT ONLY IN THE PRESENCE OF THE AUTHORITIES (LAWYERS ARE PERMITTED TO SEE CLIENTS IN PRIVATE UNDER THE OPC). ATTORNEYS ARE PERMITTED SUFFICIENT TIME TO PREPARE A DEFENSE, BUT CONTEND THAT THEIR REQUESTS FOR EVIDENCE FAVORABLE TO THEIR CLIENTS TO BE PUT INTO THE DOSSIER OR EVIDENTIARY RECORD ARE OFTEN TURNED DOWN.

"THERE IS AN AUTOMATIC RIGHT OF APPEAL TO THE SUPREME MILITARY TRIBUNAL FOR SENTENCES GREATER THAN THREE YEARS IN THE PENITENTIARY. HOWEVER, SENTENCES CAN BE INCREASED ON APPEAL, THERE IS NO EXPRESS CONSTITUTIONAL PROVISION AGAINST THIS BUT IT IS CONSIDERED BY SOME LAWYERS TO BE AGAINST THE LEGAL PRECEPTS OF URUGUAY. AN ADDITIONAL PROBLEM FACING A PERSON DETAINED FOR SUBVERSION IS THAT WHEN A MILITARY JUDGE MAKES A DECISION IN HIS FAVOR AND ORDERS HIS RELEASE, THE MILITARY AUTHORITIES IN CHARGE OF HIS CUSTODY SOMETIMES IGNORE THE ORDER AND KEEP THE PERSON DETAINED.

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PAGE 03 MONTEV 04396 131915Z

"OTHER COMPLAINTS OF DEFENSE ATTORNEYS CONCERN THE SLOWNESS OF THE MILITARY JUDICIAL PROCESS (A COMPLAINT OFTEN HEARD ABOUT THE CIVILIAN JUDICIAL PROCESS AS WELL) AND WHAT THEY CONSIDER THE HEAVY RELIANCE BY THE MILITARY AUTHORITIES ON THE CONFESSIONS OF THE ACCUSED.

"CONVERSATIONS WITH TOP-RANKING MILITARY JUDGES TENDED TO CONFIRM THE EXISTANCE OF THESE PROBLEMS. HOWEVER, THE MILITARY JUDGES ARGUED THAT THE PROBLEMS WERE NOT AS SEVERE AS THE EMBASSY MAY HAVE BEEN LED TO BELIEVE, AND THAT THERE WERE EXTENUATING CIRCUMSTANCES (SEE REF B).

"THE MOST SERIOUS OF THE HUMAN RIGHTS VIOLATIONS THAT HAVE OCCURRED IN URUGUAY WITH RESPECT TO PERSONS ACCUSED OF "CRIMES AGAINST THE NATION" (INVASION OF THE HOME, TORTURE, THE OFTEN PROLONGED INCOMMUNICADO DETENTION OF THE ACCUSED) HAVE LARGELY TAKEN PLACE BEFORE THE PERSON EFFECTIVELY ENTERED THE MILITARY JUSTICE SYSTEM. ONCE IN THE SYSTEM, THE CONCEPT OF "DENIAL OF A PUBLIC TRIAL" CAN ONLY HAVE LIMITED APPLICATION TO URUGUAY BECAUSE OF THE LARGELY WRITTEN PROCEEDINGS UNDER WHICH BOTH THE ORDINARY AND MILITARY COURT SYSTEMS OPERATE. HOWEVER, UNDER THE RUBRIC OF A "DENIAL OF FAIR TRIAL", MANY OF THE CRITICISMS OF THE MILITARY COURTS SYSTEM APPEAR TO BE JUSTIFIED."

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